

JOINT TERRORISM TASK FORCE

STANDARD MEMORANDUM OF UNDERSTANDING

BETWEEN

THE FEDERAL BUREAU OF INVESTIGATION

AND

The City of Portland and the
Portland Police Bureau

PREAMBLE

The policy of the United States with regard to domestic and international terrorism is to deter, defeat, and respond vigorously to all terrorist attacks on our territory and against our citizens, or facilities. Within the United States, the Department of Justice, acting through the Federal Bureau of Investigation (FBI), is the lead agency domestically for the counterterrorism effort.

It is the policy of the Portland Police Bureau (“PPB”) and the City of Portland, Oregon (“Portland”) to effectively prevent and investigate acts of terrorism, protect civil rights and civil liberties under United States and Oregon law, and promote Portland as an open and inclusive community.

In order to ensure that there is a robust capability to deter, defeat, and respond vigorously to terrorism in the U.S. or against any U.S. interest, the FBI recognizes the need for all federal, state, local, and tribal agencies that are involved in fighting terrorism to coordinate and share information and resources. To that end, the FBI believes that the creation of the FBI Joint Terrorism Task Forces (JTTFs) embodies the objectives of the U.S. policy on counterterrorism as set forth in Presidential Directives.

FBI policy for the JTTFs is to provide a vehicle to work with law enforcement agencies to protect the United States against threats to our national security, including international terrorism, and thereby improve the effectiveness of law enforcement, consistent with the protection of classified or otherwise sensitive intelligence and law enforcement information, including sources and methods. JTTF operational and investigative activity, including the collection, retention and dissemination of personal information, will be conducted in a manner that protects and preserves the constitutional rights and civil liberties of all persons in the United States.

This Memorandum of Understanding (MOU) shall serve to establish the parameters for the participation of employees from the PPB in the Portland JTTF.

I. PURPOSE

- A. The purpose of this MOU is to outline the mission of the JTTF, and to define the relationship between the FBI and Portland and the PPB in order to maximize cooperation and to create an effective unit capable of addressing the most complex terrorism investigations in a manner that protects and preserves the constitutional rights and civil liberties of all persons in the United States.
- B. The MOU specifically represents the agreement between the FBI, Portland and the PPB, which will govern the process by which employees of the PPB participate in the work of the FBI as part of the JTTF.
- C. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the parties, their parent agencies, the U.S., or the officers, employees, agents or other associated personnel thereof.

II. MISSION

The mission of the JTTF is to leverage the collective resources of the member agencies for the prevention, preemption, deterrence and investigation of terrorist acts that affect United States interests, and to disrupt and prevent terrorist acts and apprehend individuals who may commit or plan to commit such acts. To further this mission, the JTTF shall serve as a means to facilitate information sharing among JTTF members. To honor this mission, JTTF must conduct its operations in a manner that protects and preserves the constitutional rights and civil liberties of all persons in the United States.

III. AUTHORITY

Pursuant to 28 U.S.C. § 533, 28 C.F.R. § 0.85, Executive Order 12333, as amended, National Security Presidential Directive (NSPD) 46/ Homeland Security Presidential Directive (HSPD) 15 and Annex II thereto, the FBI is authorized to coordinate an intelligence, investigative, and operational response to terrorism. By virtue of that same authority, the FBI formed JTTFs composed of other federal, state, local, and tribal law enforcement agencies acting in support of the above listed statutory and regulatory provisions.

IV. CONTROLLING DOCUMENTS

- A. Since the JTTF operates under the authority of the Attorney General of the United States, all JTTF participants must adhere to applicable Attorney General's Guidelines and directives, to include the following; as amended or supplemented:
1. Attorney General's Guidelines for Domestic FBI Operations [dated...];
 2. Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations [dated...];
 3. Attorney General's Guidelines Regarding Prompt Handling of Reports of Possible Criminal Activity Involving Foreign Intelligence Sources [dated...];
 4. Attorney General Memorandum dated March 6, 2002, titled "Intelligence Sharing Procedures for Foreign Intelligence and Foreign Counterintelligence Investigations Conducted by the FBI" [dated...];
 5. Attorney General's Guidelines Regarding the Use of Confidential Informants [dated...];
 6. Attorney General's Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions [dated...];
 7. Attorney General's Guidelines Regarding Disclosure to the Director of Central Intelligence and Homeland Security Officials of Foreign Intelligence Acquired in the Course of a Criminal Investigation [dated...]; and
 8. Memorandum from the Deputy Attorney General and the FBI Director re: Field Guidance on Intelligence Sharing Procedures for [Foreign Intelligence] and [Foreign Counterintelligence] Investigations (December 24, 2002).

All guidance on investigative matters handled by the JTTF will be issued by the Attorney General and the FBI. The FBI will provide copies of the above-listed guidelines and any other applicable policies for reference and review to all JTTF members, and will promptly notify the PPB of any updates or revisions to these documents. Nothing in this MOU is intended to remove limits on investigative techniques set forth elsewhere. The FBI agrees to conduct periodic briefings of the member agencies of the JTTF pursuant to all legal requirements and FBI policies.

V. STRUCTURE AND MANAGEMENT OF THE TASK FORCE

A. MEMBERS

1. The Portland JTTF shall consist of a combined body of sworn and non-sworn personnel from the FBI and other participating agencies, and as needed, sworn personnel from the PPB.

B. PROGRAM MANAGEMENT, DIRECTION, AND SUPERVISION

1. In order to comply with Presidential Directives, the policy and program management of the JTTFs is the responsibility of FBI Headquarters (FBIHQ). The overall commander of the Portland JTTF will be the Special Agent in Charge (SAC) or Assistant Director in Charge (ADIC), if assigned, of the FBI's local Field Division. The operational chain of command beginning at the highest level, in each FBI Field Division will be as follows: ADIC if assigned, SAC, Assistant Special Agent in Charge (ASAC), and Supervisory Special Agent [JTTF Supervisor].
2. Each FBI ADIC/SAC, through his or her chain-of-command, is responsible for administrative and operational matters directly associated with the Division's JTTF. Operational activities will be supervised by FBI JTTF Supervisors. Staffing issues are the responsibility of the FBI chain of command. The JTTF supervisor will supervise the operational and day-to-day work of any PPB participant working with the JTTF.
3. PPB officers will remain in the chain of command and under supervision of PPB. Each PPB representative will report to his or her respective agency for personnel administrative matters. The PPB shall be responsible for the pay, overtime, leave, performance appraisals, and other personnel matters relating to its employees participating with the JTTF. As discussed later herein at Paragraph XI, the FBI and the PPB may provide for overtime reimbursement by the FBI by separate written agreement.
4. All investigations opened and conducted by the JTTF must be conducted in conformance with FBI policy, to include the above stated Controlling Documents. Each FBI ADIC/SAC, through his or her chain-of-command, will ensure that all investigations are properly documented on FBI forms in accordance with FBI rules and regulations. Any operational problems will be resolved at the field office level. Any problems not resolved at the field office level will be submitted to PPB and FBI headquarters for resolution.

C. OVERSIGHT

1. Any participant or member of the JTTF must at all times adhere to the high ethical standards and strict standards of conduct governing the work of the JTTFs. Participants and members of the JTTF must at all times conduct themselves in a manner that protects and preserves the constitutional rights and civil liberties of all persons in the United States.
2. In order to ensure compliance with ethical and professional conduct requirements, and to ensure protection of civil rights and civil liberties, the FBI and Department of Justice will continue to conduct aggressive and thorough oversight of the work of JTTFs, including regular case file reviews and national security reviews.
3. PPB participants on the JTTF will remain subject to the personnel rules, regulations, laws, and policies applicable to employees of the PPB. PPB participants in the JTTF shall at all times comply with the limitations imposed by ORS 181.575 and 181.850. PPB participants shall promptly report any violation of ORS 181.575 or 181.850 to the Chief of Police of the PPB.
4. PPB participants in the JTTF will be required to attend annual training, to be conducted by the Attorney General of Oregon, to ensure familiarity and compliance with applicable state law.
5. PPB participants must also adhere to the FBI's ethical standards and will be subject to the Supplemental Standards of Ethical Conduct for employees of the Department of Justice. If there is at any point a conflict between the standards or requirements of the FBI and PPB, PPB participants will abide by the standard that most limits the scope of their authority.
6. JTTF members are subject to removal from the JTTF by the FBI or PPB for violation of any provision of this MOU, the FBI's ethical standards, the Supplemental Standards of Ethical Conduct for employees of the Department of Justice, or other applicable agreements, rules, and regulations.
7. The FBI maintains oversight and review responsibility of the JTTFs. In the event of an FBI inquiry into JTTF activities by an investigative or administrative body, including but not limited to, the FBI's Office of Professional Responsibility or the FBI's Inspection Division, each PPB participant may be subject to interview by the FBI.
8. PPB participants will be authorized to provide regular briefings to the Chief of Police regarding their work with the JTTF. The Chief of Police and/or Commissioner-in-Charge of the PPB may request a briefing on the activities of

the JTTF and work of PPB participants at any time. Such briefings will be undertaken consistent with the requirements for handling of classified information.

9. PPB participants may seek legal advice from the Portland City Attorney to ensure compliance with this MOU. Any such consultation will be undertaken consistent with the requirements for handling of classified information. In the event disclosure of classified information is necessary for the City Attorney to provide appropriate advice, the Chief of Police of the PPB may request that the City Attorney be authorized to receive such information pursuant to a non-disclosure agreement.

D. PHYSICAL LOCATION AND SUPPORT:

1. The FBI will provide office space and necessary secretarial, clerical, automation, and technical support for the JTTF in accordance with FBI guidelines and procedures. The FBI will provide all furniture and office equipment. Participating agencies may bring office equipment or furniture into FBI space with the approval of the FBI JTTF Supervisor and in compliance with FBI regulations.
2. The introduction of office equipment and furniture into FBI space by Participating Agencies is discouraged, as any such material is subject to examination for technical compromise, which may result in its being damaged or destroyed.

VI. SECURITY PROGRAM

A. CLEARANCES

1. PPB participants must apply for and receive a Top Secret/Sensitive Compartmented Information (TS/SCI) Security Clearance granted by the FBI. No one will have access to sensitive or classified documents or materials or FBI space without a valid security clearance and the necessary “need-to-know.” Pursuant to the provisions of Section 1.2 of Executive Order 12968, PPB participants are required to have signed a nondisclosure agreement approved by the FBI’s Security Division. Pursuant to federal law, JTTF members are strictly forbidden from disclosing any classified information to individuals who do not possess the appropriate security clearance and the need to know.

2. The PPB fully understands that its personnel participating in the JTTF are not permitted to discuss official JTTF business with supervisors who are not members of the JTTF unless the supervisor possesses the appropriate security clearance and the dissemination or discussion is specifically approved by the FBI JTTF Supervisor, except as otherwise provided by this MOU (See V.C.9).
3. The Chief of the PPB will apply for a Top Secret/Sensitive Compartmented Information (TS/SCI) Security Clearance. The Commissioner-in-Charge of the PPB will apply for the level of security clearance the Commissioner considers appropriate to ensure effective supervision of PPB participants.
4. In accordance with the Director of Central Intelligence Directive (DCID) 6/4, entitled Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information (SCI), the FBI will implement protocols to ensure Special Agent (SA) and Task Force Officers (TFO) assigned to Joint Terrorism Task Forces (JTTF) in the field and the National Joint Terrorism Task Force (NJTTF) at FBI Headquarters - Liberty Crossing 1, are in compliance with stated directive. In order to comply with DCID 6/4, all JTTF personnel, including FBI and non-FBI JTTF members and contractors who perform functions requiring access to FBI classified data networks and space, will be given counter-intelligence focused polygraphs. The FBI will recognize polygraph examinations conducted by outside federal agencies that meet the FBI's PSPP requirement. The FBI will make the final determination whether a polygraph examination meets the PSPP requirements.
5. All JTTF members must agree to submit to counter-intelligence focused polygraphs as part of the process for obtaining and retaining a Top Secret Security Clearance.

B. RESTRICTIONS ON ELECTRONIC EQUIPMENT

Personally owned Portable Electronic Devices (PEDs) including, but not limited to, personal digital assistants, Blackberry devices, cellular telephones, and two-way pagers are prohibited in FBI space unless properly approved. No portable electronic devices are permitted to operate within SCIFs as outlined in DCI Directive 6/9 and existing Bureau policy. All other non-FBI owned information technology and systems (such as computers, printers, fax machines, copiers, PEDs, cameras, and media including diskettes, CDS, tapes) require FBI approval prior to introduction, operation, connection, or removal from FBI spaces to include SCIFs. Additionally, if approved by the FBI Security Officer, these systems must operate in compliance with the FBI's policies, guidelines, and procedures.

VII. DEPUTATION

PPB participants in the JTTF will be federally deputized. The FBI will secure the required authorization for their deputation. Deputation of these individuals will ensure that they are able to assist fully in investigations in compliance with applicable federal statutes. On occasion, investigations may be conducted outside of the JTTF's assigned territory. Deputation will allow non-federal members of the JTTF to exercise federal law enforcement authority throughout the United States.

Under the terms of this MOU, the PPB agrees that non-sworn personnel participating in the JTTF will not : (1) participate in law enforcement activities, (2) carry a weapon; or (3) participate in the execution of search/arrest warrants.

VIII. STAFFING COMMITMENT

- A. The Chief of Police will determine the staffing commitment to be made by the PPB, in consultation and with approval of the Commissioner-in-charge of PPB, and in consultation with the SAC. This staffing commitment will include assignment of a supervisor to the JTTF in order to ensure effective management and oversight of any PPB participant. All non-FBI members of the JTTF must adhere to the same rules and regulations as FBI employees with regard to conduct and activities while in FBI space, while operating FBI vehicles, and while conducting JTTF business.
- B. During periods of heightened threats and emergencies, the JTTFs may be expected to operate 24 hours per day, seven days per week, for extended periods of time. To function properly, the JTTF depends upon the unique contributions of each Participating Agency. Accordingly, during these periods, each PPB participant will be expected to be available to support JTTF activities.

IX. RECORDS, REPORTS AND INFORMATION SHARING

- A. All JTTF materials and investigative records, originate with, belong to, and will be maintained by the FBI. All investigative reports will be prepared by JTTF personnel solely on FBI forms. All information generated by the FBI or the JTTF will be controlled solely by the FBI and may not be removed from FBI space without the approval of the JTTF Supervisor. Dissemination, access or other use of JTTF records will be in accordance with Federal law, Executive Orders, and Department of Justice and FBI regulations and policy, including the dissemination and information sharing provisions of the FBI Intelligence Policy Manual. As FBI records, they may be disclosed only with FBI permission and only in conformance with the provisions of federal laws and regulations, including the Freedom of Information Act, 5 U.S.C. Section 552, and the Privacy Act of 1974, 5 U.S.C. Section 552a, as well as applicable civil and criminal discovery privileges. This policy includes any disclosure of FBI information, including JTTF materials and investigative records, to employees and officials of a Participating Agency who are not members of a JTTF, which must be approved by the JTTF supervisor. All electronic records and information, including, but not limited to, systems, databases and media, are also regulated by FBI policy. JTTF members may request approval to disseminate FBI information from the JTTF Supervisor.
- B. A copy of this Memorandum of Understanding will be presented to the City Council for the review and adoption and will be considered a public record subject to disclosure requirements under Oregon law.
- C. The PPB agrees to have its participants in the JTTF execute an FD-868, or a similar form approved by the FBI. This action obligates the participant, who is accepting a position of special trust in being granted access to classified and otherwise sensitive information as part of the JTTF, to be bound by prepublication review to protect against the unauthorized disclosure of such information.
- D. All JTTF members and participants will be required to record their workload in the Time Utilization Recordkeeping (TURK) system used by the FBI.
- E. In the event of a terrorist-related threat presenting a substantial risk of injuries or deaths in the Portland metropolitan area, the SAC and Chief of Police of the PPB will brief the Commissioner-in-Charge of the PPB on the nature of the threat so that the Commissioner-in-Charge can fulfill his/her responsibilities to ensure appropriate preparedness and response steps are undertaken. Any such briefing must be undertaken consistent with rules limiting access to classified information to those with appropriate security clearances. The Commissioner-in-Charge will abide by any restrictions set by the SAC or Chief of Police to prevent further dissemination of the information that might undermine an on-going investigation or operation.

- F. Within 30 days after any change in personnel in the position of Commissioner-in-Charge of the PPB, Chief of Police of the PPB, SAC for the Portland Field Office, or United States Attorney for Oregon, these four officials shall meet to review the requirements of this MOU.

X. COORDINATION

- A. The PPB agrees to not knowingly act unilaterally on any matter affecting the JTTF without first coordinating with the FBI. The parties agree that matters designated to be handled by the JTTF shall not knowingly be subject to non-JTTF or non-FBI intelligence, law enforcement, or operational efforts by the Participating Agency. Intelligence, law enforcement, and operational actions will be coordinated and cooperatively carried out within the JTTFs.
- B. JTTF criminal investigative procedures will conform to the requirements for federal prosecution. It is expected that the appropriate United States Attorney, in consultation with the FBI and affected JTTF partners, will determine on a case-by-case basis whether the prosecution of cases will be at the federal or state level, based upon which would better advance the interests of justice.

XI. FUNDING

This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds. Even where one party has agreed (or later does agree) to assume a particular financial responsibility, written agreement must be obtained before incurring an expense expected to be assumed by another party. All obligations of and expenditures by the parties are subject to their respective budgetary and fiscal processes and availability of funds pursuant to all laws, regulations, and policies applicable thereto. The parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years. The FBI and the PPB may enter into a separate agreement to reimburse the Participating Agency for approved overtime expenses.

XII. TRAVEL

All JTTF-related travel of non-FBI personnel requires the approval of the appropriate JTTF Supervisor and PPB authorization prior to travel. In order to avoid delay in operational travel, the PPB will provide general travel authority to all of its participating employees for the duration of the employee's membership in the JTTFs. For domestic travel, each agency member will be responsible for appropriate notifications within his or her own agency, as well as standard FBI travel approvals and notification. The FBI will obtain FBIHQ authorization and country clearances for all JTTF members who are required to travel outside the United States. As noted above, the appropriate security clearance must be obtained prior to any international travel. The FBI will pay costs for travel of all members of the JTTFs to conduct investigations outside of the JTTF's assigned territory.

XIII. VEHICLES AND EQUIPMENT

- A. In furtherance of this MOU, employees of the PPB may be permitted to drive FBI owned or leased vehicles for surveillance, case management and investigation in connection with any JTTF investigation. FBI vehicles must only be used for official JTTF business and only in accordance with applicable FBI rules and regulations.

Any civil liability arising from the use of an FBI owned or leased vehicle by a PPB participant while engaged in any conduct other than his or her official duties and assignments under this MOU shall not be the responsibility of the FBI or the United States. To the extent permitted by applicable law, the PPB will hold harmless the FBI and the United States for any claim for property damage or personal injury arising from any use of an FBI owned or leased vehicle by a PPB JTTF participant which is outside of the scope of his or her official duties and assignments under this MOU.

- B. For official inventory purposes, all JTTF equipment including badges, credentials and other forms of JTTF identification subject to FBI property inventory requirements will be produced by each JTTF member upon request. At the completion of the member's assignment on the JTTF, or upon withdrawal or termination of the PPB from the JTTF, all equipment will be returned to the supplying agency.

XIV. FORFEITURE

The FBI shall be responsible for the processing of assets seized for federal forfeiture in conjunction with JTTF operations, as provided by these rules and regulations. Asset forfeitures will be conducted in accordance with federal law and the rules and regulations set forth by the U.S. Department of Justice and the FBI. Forfeitures attributable to JTTF investigations will be distributed among the Participating Agencies in JTTF-related operations at the discretion of the FBI.

XV. HUMAN SOURCES

- A. The FBI has established strict and detailed policies governing the use of confidential informants (or "human sources"). These policies are much more clearly defined and restrictive than the policies currently regulating use of informants by local police forces in many cities. Accordingly, any PPB participant in the JTTF must become familiar with and adhere to all applicable FBI rules and guidelines governing the use of human sources.
- B. All human sources developed through the JTTF will be handled in accordance with the Attorney General's and the FBI's guidelines, policies and procedures.

- C. All human sources developed during the course of any JTTF investigation shall be operated with all appropriate FBI suitability paperwork completed prior to use. All source debriefings or written products of information obtained from any human source will use FBI document format and handling procedures.
- D. The FBI, as permitted by federal law, agrees to pay reasonable and necessary human source expenses incurred by the JTTF. All expenses must be approved by the FBI before they are incurred. No payments may be made to JTTF human sources without prior FBI approval.

XVI. MEDICAL

- A. All Participating Agencies will ensure that detailed JTTF members are medically qualified according to their agencies' standards to perform law enforcement duties, functions and responsibilities.
- B. To ensure protection for purposes of the Federal Employees' Compensation Act (FECA), JTTF members should be detailed to the FBI consistent with the provisions of the Intergovernmental Personnel Act (IPA), 5 U.S.C. § 3374(d). This Act stipulates that "[a] State or local government employee who is given an appointment in a Federal agency for the period of the assignment or who is on detail to a Federal agency and who suffers disability or dies as a result of personal injury sustained while in the performance of his duty during the assignment shall be treated . . . as though he were an employee as defined by section 8101 of this title who has sustained the injury in the performance of duty." Other provisions of federal law may extend FECA benefits in more limited circumstances. The Department of Labor's Office of Workers' Compensation Programs is charged with making FECA coverage determinations and is available to provide guidance concerning specific circumstances.

XVII. TRAINING

All JTTF members are required to attend FBI legal training in compliance with FBI regulations and any other training deemed necessary by the FBI chain of command. The FBI is responsible for the costs of such training. The PPB will bear the costs of any training required of its own employees detailed to the JTTF.

XVIII. DEADLY FORCE AND SHOOTING INCIDENT POLICIES

PPB Participants in the JTTF will follow their own agency's policy concerning use of deadly force.

XIX. MEDIA

All media releases will be mutually agreed upon and jointly handled by the member Participating Agencies of the appropriate JTTF. Press releases will conform to DOJ Guidelines regarding press releases. No press release will be issued without prior FBI approval.

XX. LIABILITY

The PPB acknowledges that financial and civil liability, if any and in accordance with applicable law, for the acts and omissions of each employee detailed to the JTTF remains vested with his or her employing agency. However, the Department of Justice (DOJ) may, in its discretion, determine on a case-by-case basis that an individual should be afforded legal representation, legal defense, or indemnification of a civil judgment, pursuant to federal law and DOJ policy and regulations.

A. COMMON LAW TORT CLAIMS

1. Congress has provided that the exclusive remedy for the negligent or wrongful act or omission of an employee of the U.S. Government, acting within the scope of his or her employment, shall be an action against the United States under the FTCA, 28 U.S.C. § 1346(b), and §§ 2671 - 2680.
2. Notwithstanding the provisions contained in Article XIII of this MOU, for the limited purpose of defending civil claims arising out of JTTF activity, a state, local, or tribal law enforcement officer who has been federally deputized and who is acting within the course and scope of his or her official duties and assignments pursuant to this MOU may be considered an “employee” of the U.S. government, as defined at 28 U.S.C. § 2671. See 5 U.S.C. § 3374(c)(2).
3. Under the Federal Employee Liability Reform and Tort Compensation Act of 1998 (commonly known as the Westfall Act), 28 U.S.C. § 2679(b)(1), if an employee of the United States is named as a defendant in a civil action, the Attorney General or his or her designee may certify that the defendant acted within the scope of his or her employment at the time of the incident giving rise to the suit. 28 U.S.C. § 2679(d)(2). The United States can then be substituted for the employee as the sole defendant with respect to any tort claims alleged in the action. 28 U.S.C. § 2679(d)(2). If the United States is substituted as defendant, the individual employee is thereby protected from suit on any tort claim arising out of the incident.
4. If the Attorney General declines to certify that an employee was acting within the scope of employment, “the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment.” 28 U.S.C. § 2679(d)(3).

5. Liability for any negligent or willful acts of JTTF members undertaken outside the terms of this MOU will be the sole responsibility of the respective employee and agency involved.

B. CONSTITUTIONAL CLAIMS

1. Liability for violations of federal constitutional law may rest with the individual federal agent or officer pursuant to Bivens v. Six Unknown Names Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) or pursuant to 42 U.S.C. § 1983 for state officers.
2. Federal, state, local, and tribal officers enjoy qualified immunity from suit for constitutional torts, “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800 (1982).
3. If a PPB JTTF participant is named as a defendant in his or her individual capacity in a civil action alleging constitutional damages as a result of conduct taken within the course of the JTTF, the officer may request representation by DOJ. 28 C.F.R. §§ 50.15, 50.16.
4. An employee may be provided representation “when the actions for which representation is requested reasonably appears to have been performed within the scope of the employee’s employment, and the Attorney General, or his or her designee, determines that providing representation would otherwise be in the interest of the United States.” 28 C.F.R. § 50.15(a).
5. A JTTF member’s written request for representation should be directed to the Attorney General and provided to the Chief Division Counsel (CDC) of the FBI division coordinating the JTTF. The CDC will forward the representation request to the FBI’s Office of the General Counsel (OGC), together with a letterhead memorandum concerning the factual basis of the lawsuit. FBI’s OGC will then forward the request to the Civil Division of DOJ, together with an agency recommendation concerning scope of employment and DOJ representation. 28 C.F.R. § 50.15(a)(3).
6. If a JTTF member is found to be liable for a constitutional tort, he or she may request indemnification from DOJ to satisfy an adverse judgement rendered against the employee in his or her individual capacity. 28 C.F.R. § 50.15(c)(4). The criteria for payment are substantially similar to those used to determine whether a federal employee is entitled to DOJ representation under 28 C.F.R. § 50.15(a).

7. Determinations concerning legal representation and indemnification by the United States are discretionary and are made by DOJ on a case-by-case basis. The FBI cannot guarantee that the United States will provide legal representation, legal defense, or indemnification to any federal or state employee detailed to the JTTF, and nothing in this Article shall be deemed to create any legal right on the part of any JTTF personnel.

C. EXPRESS RESERVATIONS

1. Nothing in this Article shall be deemed to create an employment relationship between the FBI or the United States and any PPB participant in the JTTF other than for exclusive purposes of the FTCA, as outlined herein.
2. The participating agencies do not waive any available defenses and/or limitations on liability. The PPB shall not be considered to be an agent of any other Participating Agency.

XXI. DURATION

- A. The term of the MOU shall be five (5) years. The MOU may be terminated at will by any party, provided written notice is provided to the other parties of not less than sixty (60) days. Upon termination of the MOU, all equipment will be returned to the supplying agency(ies). It is understood that the termination of this agreement by any one of the Participating Agencies will have no effect on the agreement between the FBI and all other participating agencies.
- B. Notwithstanding this provision, the provisions of Paragraph IX, entitled RECORDS, REPORTS AND INFORMATION SHARING, and Paragraph XXI, entitled LIABILITY, will continue until all potential liabilities have lapsed. Similarly, the inherent disclaimer limitation contained in the EXPRESS RESERVATION provision will survive any termination.

XXII. AMENDMENTS

This agreement in no manner affects any existing MOUs or agreements with the FBI or any other agency. This agreement may be amended only by mutual written consent of the parties. The modifications shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of the FBI, Portland and the PPB.

SIGNATORIES:

_____ Date: _____

_____ Date: _____

Federal Bureau of Investigation

_____ Date: _____

Contracting Officer
Federal Bureau of Investigation
Washington, D.C.